IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 539 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE NEW INDIA ASSURANCE COMPANY LIMITED - Appellant(s)

Versus

UKABHAI CHHOTABHAI MALI & ORS. - Respondent(s)

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Appearance :

Ms. Viraj Fozdar with Shri Shalin Mehta for Appellant(s).

None for Respondent Nos. 1 – 3 though served.

Shri Nilesh A. Pandya for Respondent Nos. 4 - 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/08/2007

ORAL JUDGMENT

The appellant-Insurance Company, being aggrieved by the

judgement and award dated 25th August, 1989 passed by the learned Motor Accident Claims Tribunal (Main), Vadodara in M.A.C. Application No.8 of 1986, has filed this appeal with a submission that the Insurance Company's liability would be only to the extent of Rs.1,50,000/- and the learned Tribunal below was unjustified in holding that the Insurance Company would be liable to the total claim of Rs.2,94,000/-.

2. The learned Counsel for the appellant submits that in the present matter, the policy produced before the learned Tribunal does not mention that any extra premium was paid by the owner of the vehicle to obtain extra risk or to get a comprehensive policy. According to the learned Counsel, the learned Tribunal below was unjustified in holding that the liability would be unlimited because the column relating to the liability was kept blank. Placing reliance upon a judgement of the Apex Court in the matter of ***National Insurance Company Limited vs. Nathilal & Ors.***, [***AIR 1999 SC 623***], and yet another judgement of the Apex Court in the matter of ***National Insurance Company Limited vs. Jugal Kishore & Ors.***, [***AIR 1988 SC 719***], it was contended that the mere fact that the column against unlimited liability was not filled, will not automatically lead to the inference that the liability was unlimited in the absence of any special premium paid towards the claim.

3. Shri Nilesh A. Pandya, learned Counsel for respondent Nos.4 to 6, on the other hand, submitted that the learned Tribunal below has rightly relied upon a judgement of this Court wherein this Court has held that if the column has remained blank, then, the liability would be unlimited. He also submitted that in the matter of ***National Insurance Company Limited vs. Nathilal & Ors.*** (*supra*), some extra evidence was brought on the records, which has not come in this case. He submitted that the learned Tribunal below was justified in holding the Insurance Company liable to the full extent.

4. In the case on hands, the insurance policy is available on the record at Exhibit 70. The learned Tribunal below has observed that there is absolutely no mention of the liability being limited to the amount of Rs.1,50,000/- only. The learned Tribunal also observed that the necessary columns were kept open (blank) and a rubber stamp in the name of Shri K.M. Patel, the Development Officer, has been fixed against certain columns. The learned Tribunal further observed that the words “the liability of the insurance company limited to the extent of Rs.1,50,000/-” were not found in the policy. The Insurance Company must be held liable to answer the entire award. In almost an identical situation in the matter of ***National Insurance Company Limited vs. Nathilal & Ors.*** (*supra*), the Apex Court, after examining the policy

wherein certain columns were left blank, observed that the mere fact that the column against unlimited liability was not filled, will not automatically lead to the inference that the liability was unlimited in the absence of any special premium paid towards the claim. Almost same are the observations of the Apex Court in the matter of ***National Insurance Company Limited vs. Jugal Kishore*** (*supra*), wherein the Apex Court observed that if risk of any other nature, for instance, with regard to the driver or passengers, etc. in excess of statutory liability, if any, is sought to be covered, it has to be clearly specified in the policy and separate premium paid therefor.

5. In view of the authoritative pronouncement of the Apex Court in the above referred matters, I am unable to hold that the Insurance Company would be liable to satisfy the award as a whole. I allow the appeal and hold that the Insurance Company would be liable to pay a sum of Rs.1,50,000/- with interest accrued thereon, as awarded by the learned Tribunal below, upto the date of the payment and would also be answerable to pay proportionate costs. Rest of the award against the interest of the respondent Nos.1 to 3 is maintained. If the Insurance Company has deposited the entire amount and the same has been withdrawn by the claimants/respondent Nos.4 to 6, then, the Insurance Company would be entitled to recover the said amount from the

claimants, but, however, the claimants would be entitled to recover the balance amount from the respondents – Ukabhai and Dineshchandra.

6. The appeal is allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

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